

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 13-20272

v.

Honorable Thomas L. Ludington

EUGENE H. IVES,

Defendant.

/

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

On May 21, 2013, Defendant Eugene Ives was charged with attempting to transfer obscene material to a minor, two counts of sexual abuse of a minor, and two counts of abusive sexual contact with a minor. ECF No. 4. On April 17, 2014, Defendant pled guilty to one count of sexual abuse of a minor and the remaining charges were dismissed. ECF No. 36. On August 26, 2014, Defendant was sentenced to 180 months in prison and 5 years of supervised release. ECF No. 42. He is currently incarcerated at FCI Elkton.

On September 24, 2015, Defendant filed a motion to vacate his sentence under 28 U.S.C. § 2255. ECF No. 44. His motion was denied on August 1, 2016. ECF No. 61. Subsequently, Defendant filed multiple motions and letters. On January 24, 2017 Defendant filed a motion to dismiss the indictment for lack of jurisdiction, which was promptly denied. ECF Nos. 63, 64. On August 8, 2019 and October 10, 2019, Defendant submitted letters that were filed on the docket. ECF Nos. 72, 73. On December 17, 2019 Defendant filed a motion, styled as a letter, seeking "a second chance, reduction on my fifteen years." ECF No. 74 at PageID.324. His motion was denied because he failed to identify a legal basis for his request. ECF No. 75.

On January 8, 2021, Samantha Gipson, a third party, filed a motion on Defendant's behalf. ECF No. 76. Her motion was denied without prejudice. ECF No. 77.

On February 25, 2021, Defendant submitted a letter to the Court, which will be construed as a motion for reconsideration. ECF No. 78. Defendant explains that he is "replying to the letter to me," presumably this Court's February 2, 2021 Order. *Id.* He states the walls between "cubes" are only eight feet high. *Id.* He also offers that he suffers from "neck and back or lower back arthritis [sic] in back and neck," pain in his right knee, and that his arthritis "eat[s] the bone," but he cannot have surgery due to heart difficulties. *Id.*

Pursuant to Local Rule 7.1(h), a party can file a motion for reconsideration of a previous order. A motion for reconsideration will be granted if the moving party shows "(1) a palpable defect, (2) the defect misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case." *Michigan Dept. of Treasury v. Michalec*, 181 F. Supp. 2d 731, 733–34 (E.D. Mich. 2002) (quoting E.D. Mich. LR 7.1(h)(3)). A "palpable defect" is "obvious, clear, unmistakable, manifest, or plain." *Id.* at 734 (citing *Marketing Displays, Inc. v. Traffix Devices, Inc.*, 971 F. Supp. 2d 262, 278 (E.D. Mich. 1997)). "[T]he Court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the Court, either expressly or by reasonable implication." E.D. Mich. L.R. 7.1(h)(3); *see also Bowens v. Terris*, No. 2:15-CV-10203, 2015 WL 3441531, at *1 (E.D. Mich. May 28, 2015). Furthermore, "[i]t is well-settled that parties cannot use a motion for reconsideration to raise new legal arguments that could have been raised before a judgment was issued." *Bank of Ann Arbor v. Everest Nat. Ins. Co.*, 563 F. App'x 473, 476 (6th Cir. 2014).

As explained in this Court's previous order, Ms. Gipson's motion for compassionate release was denied for lack of standing, any factual or legal argument for release, and any evidence

of exhaustion. In his instant Motion, Defendant mentions some of his medical conditions. However, he does not provide sufficient factual or legal arguments for compassionate release and he does not provide any evidence that he has exhausted his administrative remedies. Accordingly, Defendant's Motion for Reconsideration will be denied.

Accordingly, it is **ORDERED** that Defendant's Motion for Reconsideration, ECF No. 78, is **DENIED**.

Dated: March 26, 2021

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and to **Eugene Henry Ives** # 48470-039, ELKTON FEDERAL CORRECTIONAL INSTITUTION, Inmate Mail/Parcels, P.O. BOX 10, LISBON, OH 44432 by first class U.S. mail on March 26, 2021.

s/Kelly Winslow
KELLY WINSLOW, Case Manager